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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,931	04/20/2006	Neil Macfarlane	DSM-08-US	2810

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HOXIE & ASSOCIATES LLC
75 MAIN STREET , SUITE 301
MILLBURN, NJ 07041

EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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07/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/576,931	Applicant(s) MACFARLANE, NEIL	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4-20-06</u> . | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kendrick (EP 0999259) in view of Going (3,186,854) taken with Haroldsson and the admitted state of the prior art.

Kendrick discloses the preparation of food grade edible oils. Here marine oil is deodorized in the presence of rosemary or sage extract as well as ascorbyl palmitate and tocopherols. (see abstract). On page 12, Table 9, samples 2, 3 and last sample, an antioxidant composition containing the required components of the claims is shown to be used before deodorization. The concept of adding the antioxidant components after deodorization is also indicated in this table. The specific unsaturated fatty acids of claim 2 are known in the art to be present in fish oils and page 2, paragraph 2 names some of these fatty acids. The claims appear to differ from Kendrick in the inclusion of a crystallization inhibitor. Going teaches that lecithin is a known crystallization inhibitor used in edible oil blends (see column 3, lines 44-46). It is appreciated that a crystallization

inhibitor is not mentioned in Kendrick, but one of ordinary skill in the art would be expected to use a crystallization inhibitor in an edible oil treating process to prevent solidification of the oil upon cold storage. The claims further differ from Kendrick in view of Going in the recitation of the treatment of ester concentrates of fatty acids. Kendrick is directed to the treatment of triglycerides. But the ester concentrates would be expected to react like triglycerides in a stabilization process because the fatty acid portion of the triglyceride molecule is the part of the compound that becomes susceptible to oxidation. Applicant himself utilized Kendrick's process in a pilot study but applicant did not try the composition which Kendrick discovered to result in the highest rancimat induction time (eg samples 2, 3 and last sample). The claims finally appear to differ from the references in the processing of ethyl esters of fatty acids. Haraldsson teaches that the manufacture of ethyl esters of fatty acids is known in the art. It would have been obvious to one of ordinary skill in the art to stabilize the fatty acids of Kendrick taken with Haraldsson, either as a triglyceride or as an ethyl ester, by the process of Kendrick and with the crystal inhibitor of Going. It is appreciated that the use of ethyl esters of fatty acids are not mentioned in food products but one would expect ethyl esters of fatty acids

to be suitable for use in foods as substitutes for triglycerides. Applicant admits at page 3, lines 15-20 that ethyl esters of fatty acids are commercially available and suitable for use as nutritive ingredients. It would be obvious to utilize the ethyl esters of Haroldsson as stabilized by Kendrick in view of Going in a food formulation for its nutritive purposes.

Claims 1-14 and 16-21 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for deodorization processes at temperatures within the range of that cited at page 5, line 10, does not reasonably provide enablement for any and all deodorization process temperatures. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims. It is not seen that deodorization could be accomplished at any standard deodorization temperature because the boiling point of the ethyl ester of a fatty acid is generally lower than the corresponding fatty acid.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone

number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

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Art Unit: 1794

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